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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Truth-in-Billing and
Billing Format

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CC Docket No. 98-170

COMMENTS OF BELL ATLANTIC MOBILE, INC.

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Bell Atlantic Mobile, Inc. (BAM) submits these initial comments in opposition to the Commission's Notice of Proposed Rulemaking in this proceeding (FCC 98-232, released September 17, 1998 (Notice)).

SUMMARY

With this action, the Commission has again turned a deaf ear to the pleas of wireless providers that it respect Congress's mandate for a deregulatory approach to commercial mobile radio services. BAM has become increasingly discouraged by the steady stream of CMRS regulation that continues to pour out of the Commission. Time and again new burdens are proposed for CMRS even though they grow out of concerns that are unrelated to that industry. This proceeding threatens to follow the same course by seizing on issues that primarily involve landline IXC slamming, IXC charges for universal service, and third-party cramming as a basis for further regulating CMRS. In the face of Congress's mandate of less regulation for wireless and the Commission's own findings that consumers are benefiting from

the lower prices flowing from wireless competition, the Commission is nonetheless again proposing more wireless regulation.

BAM agrees that the Commission may intervene in wireless markets where there is a clear statutory requirement or clear public interest need to do so. But it disagrees that there is any record basis for the Commission to include CMRS in this proceeding. The Notice certainly supplies no such basis. Like many other recent regulatory initiatives, it casually remarks that the proceeding will include CMRS, but supplies no facts which could warrant doing so. The Notice proposes unworkable requirements which conflict with Commission decisions in the CPNI rulemaking and other earlier proceedings and will not serve wireless subscribers. The proper action is to conclude this proceeding without imposing new rules against wireless providers.

I. THE NOTICE AGAIN DEPARTS FROM CONGRESS'S DEREGULATORY MANDATE FOR WIRELESS SERVICES.

BAM's objection to this latest regulatory intrusion into the CMRS market is rooted in its belief that the Commission is again disregarding the federal policy that relies on market forces rather than regulation to bring benefits to the public. Had the Notice acknowledged that policy but presented information that nonetheless pointed to a need for new CMRS regulation, BAM could understand why CMRS is included. But the Notice, like other recent actions, casually extends its scope to

include CMRS without supplying any record basis for new CMRS regulation. This approach is inconsistent with the federal paradigm for wireless services.

In 1993, Congress rewrote Section 332 of the Act to codify a new federal policy for regulating mobile radio services. The new paradigm relied on market forces rather than government regulation to promote a customer-responsive mobile services industry. Mobile services were not to be regulated as traditional utilities. Instead they were to be free of much of the detailed regulation governing services that faced less competition.

The FCC promptly issued three major decisions implementing Section 332, all of which followed the mandate from Congress to rely on competition rather than regulation. In its first decision, the FCC proclaimed:

We establish, as a principal objective, the goal of ensuring that unwarranted regulatory burdens are not imposed upon any mobile radio licensees that are classified as CMRS providers.¹

Its next decision, which changed or removed numerous wireless rules, reaffirmed that this course

is an essential step toward achieving the overarching Congressional goal of promoting opportunities for economic forces – not regulation – to shape the development of the marketplace.²

¹ Implementation of Section 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994).

² Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 8004 (1994).

The Commission invoked its new CMRS preemption authority by striking down eight states' regulatory schemes for cellular carriers. It stated even more forcefully the rationale for strictly limiting CMRS regulation:

In 1993, Congress amended the Communications Act to revise fundamentally the statutory system of licensing and regulating wireless (i.e., radio) telecommunications services. . . . OBRA reflects a general preference in favor of reliance on market forces rather than regulation. . . . Congress delineated its preference for allowing this emerging market to develop subject to only as much regulation for which the Commission and the states could demonstrate a clear cut need. The public interest goal of this Congressional plan is readily discernable. Congress intended to promote rapid deployment of a wireless telecommunications infrastructure.³

Market forces, not traditional utility regulations, were to govern mobile services. Significantly, the Commission acknowledged that Congress had placed a heavy burden of justifying any CMRS regulation on the Commission.

Nothing in the 1996 Act changed Congress's specific deregulatory mandate for CMRS. To the contrary, provisions in that Act directed the Commission to rely even more on market forces to regulate competitive services. The Commission has repeatedly reported to Congress on the dramatic growth in CMRS competition, has pointed to declining wireless prices and rapid new entry in touting the success of its

³ Petition of the Connecticut Department of Public Utility Control to Retain Regulatory Control of the Rates of Wholesale Cellular Service Providers, Order, 10 FCC Rcd 7025, 7031 (1995), aff'd, 78 F.3d 351 (2d Cir. 1996).

policies promoting that competition, and has explicitly noted the benefits flowing to consumers.⁴

Despite these earlier decisions and these pro-competitive trends, recent Commission actions have proposed or enacted new regulation of wireless services. The more competition CMRS providers face, the more rules the Commission appears ready to impose. The legal problem is not merely that new requirements have been imposed on CMRS, but that those burdens have been added without a sufficient administrative record or a proper analysis of the special characteristics of wireless technologies and markets.

For example, the Commission imposed wireless number portability requirements on CMRS providers although it had no statutory obligation to do so and although there was no wireless number portability technology available.⁵ The Commission failed to address the problems specific to wireless number portability. Today, CMRS providers remain unable to purchase technology to meet that requirement, and the Commission's own expert Advisory Committee on numbering matters, the North American Numbering Council, has admitted that there remain numerous unsolved problems, one of which makes it "impossible" for some wireless

⁴ E.g., Third Annual Report on CMRS Competition, FCC 98-91, released June 11, 1998; see Remarks by Chairman Kennard to the National Association of State Utility Consumer Advocates, February 9, 1998; Remarks of Commissioner Susan Ness to the Economic Strategy Conference, March 3, 1998.

⁵ Telephone Number Portability, First Report and Order, 11 FCC Rcd 8352 (1996), appeal pending sub nom. Bell Atlantic NYNEX Mobile, Inc. v. FCC, No. 97-9551 (10th Cir.).

customers to port their numbers.⁶ Rate integration requirements were also cavalierly imposed on CMRS providers in literally one sentence of an order, without any analysis whatsoever of whether and how rate integration could or should apply to the unique geographically-defined markets and conditions of CMRS.⁷ Wireless resale obligations have been extended, even though they constitute federal economic regulation of business practices that is unheard of in other competitive industries.⁸

These concerns are not BAM's alone. Other wireless carriers have voiced them repeatedly but, as this Notice shows, so far to no avail.⁹ It is long past time for the Commission to correct its course on CMRS. This proceeding offers it an opportunity to do so.

⁶ Report of the North American Numbering Council Local Number Portability Administration Working Group on Wireless-Wireline Integration, May 8, 1998, at § 3.1.1 (emphasis added).

⁷ Policy and Rules Concerning the Interstate, Interexchange marketplace, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812 (1997).

⁸ Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, First Report and Order, 11 FCC Rcd 18455 (1996).

⁹ Many other wireless providers have strongly objected to the Commission's interventionist approach toward CMRS. E.g., Comments of Comcast Cellular Communications, WT Docket No. 98-100, filed August 3, 1998 ("Too often the Commission adopts rules, without any factual analysis, and which assume that CMRS must be regulated in an identical fashion as other carriers"); Comments of PCIA, WT Docket No. 98-100, filed August 3, 1998; Petition for Reconsideration and Petition for Forbearance of CTIA, CC Docket No. 95-116, filed May 20, 1998 (CPNI rule "ignores the distinct federal policy toward CMRS regulation.").

II. THERE IS NO NEED FOR CMRS BILLING REGULATION.

The Notice continues the Commission's practice of casually extending its regulatory reach to CMRS without any record basis for doing so. If the Notice had documented CMRS provider billing practices which were harming subscribers, and explained why those problems could not be addressed through existing rules and other legal remedies, consideration of billing rules might be appropriate for CMRS. The Notice, however, pointed to no such information. Aside from one cursory statement,¹⁰ it is silent on why the Commission should attempt to dictate the contents of wireless providers' bills. Instead, it focuses on issues that are irrelevant to wireless. For example, the Notice discusses slamming, but the uncontradicted record in another docket showed that slamming does not and cannot occur in the wireless context.¹¹

Putting aside the legal problems with the Commission's course, new CMRS billing regulation is simply unnecessary. As the Commission has recognized, CMRS

¹⁰ "Although much attention has been focused on local telephone bills, the issues raised by this proceeding are equally applicable to all bills for telecommunications services that are furnished to consumers, including bills for local service, interexchange service, and commercial mobile radio service (CMRS)." Notice at ¶ 6. The Notice fails, however, to supply facts showing why the issues apply to CMRS or to supply any further discussion of CMRS.

¹¹ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129, Further Notice of Proposed Rulemaking, Comments of AirTouch Communications, 360 Communications and Bell Atlantic Mobile, Inc., filed September 15, 1997, Reply Comments of CTIA, filed Sept. 30, 1997.

is a competitive market where new entrants and existing carriers are vigorously pursuing both present and potential subscribers of wireless services. Carriers compete on many fronts, including the way they bill for calls, collect charges and provide customer service to answer questions about bills. In this highly competitive market, customers who are dissatisfied with the way their bills are provided or the way charges are explained can easily change carriers.

Other proceedings have documented churn rates among wireless subscribers, showing that dissatisfied customers can and do walk away at annual rates of 30 percent or more, because changing wireless carriers is easy and there are multiple competitors ready to serve a customer who becomes dissatisfied with their current provider.¹² Churn ensures that wireless carriers must, out of business necessity, respond to customer demands. A carrier that ignores customer objections as to billing, no less than complaints about service quality, risks losing those customers.

To the extent any CMRS billing problems might exist, the competitive CMRS market supplies its own solution. This is precisely what Congress had in mind in determining that the federal paradigm for CMRS should rely on market forces rather than regulation.

¹² E.g., Third CMRS Competition Report at 51 (1998), documenting monthly churn rates of 2.8% for paging and 2.1% for cellular, meaning that more than a third of paging customers and nearly a third of cellular customers change providers each year. Churn rates themselves do not point to an unsolved problem; rather they show that a market is competitive.

Beyond the remedies that the market itself provides, CMRS providers that engage in unfair or deceptive billing practices are subject to multiple legal remedies. Section 332, together with other provisions of the Act which establish a federal regulatory framework for mobile services, grant the Commission jurisdiction to regulate wireless providers, including billing practices, and the Commission also possesses authority under Sections 201, 207, and 208 of the Act to address any complaints of unfair or unreasonable practices of wireless and other carriers. It has found that these remedies are available to police unlawful conduct and that, for this and other reasons, forbearance from enforcement of Section 203 and other provisions of the Act against CMRS providers was appropriate:

In a competitive market, market forces are generally sufficient to ensure the lawfulness of rate levels, rate structures, and terms and conditions of service set by carriers who lack market power. Removing or reducing regulatory requirements also tends to encourage market entry and lower costs.¹³

It is not clear how the Commission can reconcile that 1994 decision, based on CMRS market conditions that were less competitive than today, with a decision to institute CMRS billing regulation. The Commission's approach is particularly troubling given that Congress has not directed that the Commission impose any regulation of wireless billing practices. The Notice, in any event, fails to supply the requisite factual or legal justification for doing so.

¹³ E.g., Implementation of Section 3(n) and 332 of the Communications Act, Second Report and Order, 9 FCC Rcd 1411, 1418 (1994).

More than a decade ago, the Commission repealed longstanding rules which had regulated the billing practices of broadcast stations.¹⁴ It concluded that these rules were unnecessary because competitive market forces would discourage broadcast licensees from engaging in fraudulent billing. The Commission also conceded it had little expertise in regulating billing practices, and that its limited resources should be deployed where it did have expertise. It rejected contentions that it had a public interest responsibility to regulate billing, citing approvingly a court ruling that “the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct regulation in appropriate circumstances.”¹⁵

These considerations are equally present here. Market forces will discipline CMRS providers from engaging in improper practices, but when they do not, other remedies are available. At a time when the Commission is arguing to Congress that it needs additional appropriations to carry out its mandate, it should not divert its scarce resources to an area where it has limited expertise.

III. SPECIFIC PROPOSALS IN THE NOTICE ARE UNWORKABLE AND WOULD ONLY CONFUSE WIRELESS CUSTOMERS.

The Notice’s proposals are based on landline billing issues that arise from the particular regulatory structure for landline markets and how landline customers

¹⁴ Elimination of Unnecessary Broadcast Regulation, 59 RR 2d 1500 (1986).

¹⁵ Id., citing Wold Communications, Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984).

are billed for long distance and other services. At best the proposals make no sense for CMRS. At worst, they will confuse wireless customers and needlessly add to wireless providers' costs.

The Notice (at ¶ 17) suggests that telephone bills should “present separate categories of services (such as charges for local, long distance, and miscellaneous service) in clearly separate sections within the telephone bill and, if possible, on separate pages.” It ignores the reality that wireless services are not demarcated either by law or the market into “local” and “long distance.” Many CMRS providers offer rate plans in which calls are billed at a bundled or single rate which combines airtime and “long distance” charges.¹⁶ Forcing separation of such charges on subscriber bills would be unworkable and would undermine the pro-competitive bundled rates that are contributing to the growth of wireless service.

The Notice's local vs. long distance disaggregation proposal also conflicts with a central tenet of the Commission's earlier decision adopting rules governing the use of CPNI. The Commission there decided that “service” for purposes of Section 222 of the Act meant three distinct categories of service: local, long distance, and CMRS, which was to be a third, discrete service. It refused to accept the views of

¹⁶ AT&T, for example, offers “One Rate,” a nationally available bundled rate plan with the following promotion: “With AT&T Digital One Rate, every call is like a local call. Never a roaming or long distance charge.” Promotions for BAM's “SingleRateUSA” bundled rate offering state, “For nationwide calling, DigitalChoice SingleRateUSA lets you call from anywhere to anywhere with no roaming or long distance charges.”

some parties that CMRS should be treated either as local or long distance: “We reject the notion that CMRS is not a separate service offering.”¹⁷ The Notice, however, ignores that ruling by presuming that wireless services can be categorized as local or long distance. The proper course, consistent with the CPNI decision, is not to impose any billing segregation requirements on CMRS providers.

Equally problematic for wireless is the proposal that carriers be required to identify other entities providing services and the charges for those services (Notice at ¶ 23). One of the unique features of wireless is “roaming,” in which customers can make wireless calls while traveling in geographic areas that are not served by their “home” carrier. The carrier completing the call (the “serving” carrier) does not charge the customer. Instead, through inter-carrier roaming agreements, the home carrier pays the serving carrier a contractually-negotiated amount. The charge that the subscriber pays his or her home carrier is not necessarily the same. While in some situations intercarrier charges are passed through, they are often rerated or absorbed by the home carrier for marketing or competitive reasons respectively. Thus the AT&T “One Rate” and BAM “SingleRate” plans impose no roaming charges, even though both AT&T and BAM must pay the serving carrier when their customers roam to other markets.

¹⁷ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and other Customer Information, Second Report and Order, 13 FCC Rcd 8061, at ¶ 40.

It would thus be nonsensical to require wireless carriers to advise their customers of the identity and charges of the serving carrier while roaming. There is no reason for the customer to know who the serving carrier is or what its rates are. Requiring this information would only burden wireless carriers by making bills even longer and would clearly confuse wireless customers.

The Notice (at ¶ 24) also suggests that bills must differentiate between “deniable” and “non-deniable” charges. This again is an irrelevant concept for wireless services, which are not tariffed and are not subject to state regulatory commission restrictions on service terminations by LECs based on non-payment of long distance charges. Wireless subscribers enter into service agreements that spell out subscribers’ and carriers’ respective rights and duties in the event of billing disputes. Any attempt to impose a “deniable” charge concept on wireless services as part of this proceeding would unlawfully override existing contractual relationships. In any event, customers who are dissatisfied with a wireless carrier’s handling of billing disputes have not merely contractually granted legal remedies but also have market remedies – they can change wireless carriers. Forcing wireless carriers to label certain charges as deniable would thus be unnecessary as well as unlawful.

CONCLUSION

Given that market forces and existing legal remedies are available to address deceptive billing practices, and there is no evidence that either is insufficient, the Commission has no legal or policy basis to impose new billing rules on wireless providers. The Notice's proposals make no sense in the context of wireless services. The Commission must return to a paradigm for CMRS which relies on competition to ensure that consumers obtain the services they want, and which intervenes in the market only where regulation is clearly needed. No intervention is needed here.

Respectfully submitted,

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